

**BEFORE THE  
BOARD OF EDUCATION  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of the Non-Reemployment of  
4543 Full Time Equivalent Certificated Employees,  
  
Respondents.**

**OAH No. 2011020988**

**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ), with the Office of Administrative Hearings, State of California, on April 25, 26, 27, 28, 29, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, and June 2 and 13, 2011, in Los Angeles, California.

The Los Angeles Unified School District (District) was represented by Kathleen E. Collins, Associate General Counsel II; Marcos F. Hernandez, Assistant General Counsel; and Aram Kouyoumdjian, Assistant General Counsel.

Respondents Gregory Calvert, Roger Wilson and Dana Carli Brooks appeared on the first day of hearing and on May 4, 2011, and represented themselves, but did not appear on any other day or otherwise participate in the hearing except for submission of a closing brief by Respondent Calvert, and the appearance of Respondent Wilson on June 13, 2011, for submission of an additional exhibit (page 6 added to Exhibit 463, and admitted) and for closing argument. Respondent Russell Martin appeared on the first day of hearing and on May 5, 2011, and represented himself, but did not appear on any other day or otherwise participate in the hearing. Respondent Rosemary Wilkins appeared on the first day of hearing and represented herself, but did not appear on any other day or otherwise participate in the hearing.

Respondent Chryssa Elliott appeared on the first day of hearing and on May 16, 2011, and was represented by Bruce Landau of Landau & Landau. Neither she nor her attorney appeared on any other day or otherwise participated in the hearing.

Respondents Jose Medina, Denise Piscitello, and Patricia Young appeared on the first day of hearing and were represented by Michael J. Malak of Malak & Malak. Respondents Young and Piscitello also appeared on May 16, 2011, and were represented by Mr. Malak. Neither Respondents Medina, Piscitello or Young nor Mr. Malak appeared on any other day or otherwise participated in the hearing.

The remaining Respondents, who are identified in Exhibit 401B, were represented by Lawrence B. Trygstad, Esq., and Richard J. Schwab, Esq., of Trygstad, Schwab & Trygstad.

After the final day of testimony on June 2, 2011, the matter was continued for oral argument to June 13, 2011. In the interim, by June 8, 2011, the parties submitted closing briefs, addressing issues as ordered by the ALJ. The District's Closing Brief was marked as Exhibit 101 and was lodged; Respondent Gregory Calvert's Closing Brief was marked as Exhibit 561 and was lodged; and Respondents' Closing Brief was marked as Exhibit 562 and was lodged. The record was closed, and the matter was submitted for decision at the close of oral argument on June 13, 2011.

The ALJ, on her own motion, re-opened the record on June 14, 2011, to admit evidence of the rescission of 26 layoff notices, as approved by the District's Board of Education on June 14, 2011. The list of 26 Respondents receiving rescissions of their layoff notices was marked as Exhibit 102 and admitted into evidence. The record was closed again on June 14, 2011.

The hearing of this matter was continued from March 22, 2011, until April 25, 2011; from May 25, 2011, until June 2, 2011; and from June 2, 2011, until June 13, 2011, as described in more detail on the record and in any written orders granting and confirming the continuances. Pursuant to Education Code sections 44949, subdivision (c), and 44955, subdivision (c), the continuances extended the deadline for submission of the proposed decision until June 24, 2011.

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## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. Vivian K. Ekchian, the District's Chief Human Resources Officer, filed the Accusations in her official capacity.

2. Respondents are certificated District employees.

3. The District is the largest school district in the state of California and the second largest in the nation. The District serves approximately 600,000 students and employs approximately 40,000 certificated employees.

4(a). On February 15, 2011, Ms. Ekchian recommended to the District's Board of Education (Board) that, pursuant to Education Code sections 44949 and 44955, notice be given to a number of certificated permanent employees in various teaching and support services positions that their services would not be required for the 2011-2012 school year because it was necessary to reduce or discontinue particular kinds of services.<sup>1</sup>

4(b). On February 15, 2011, the Board adopted the recommendations in Board Report Number 204-10/11 (Resolution), to reduce and discontinue particular kinds of services no later than the end of the 2010-2011 school year and to lay off a number of certificated permanent employees due to the reduction or elimination of particular kinds of services. The Board authorized the District's Human Resources Division to send notices to certificated permanent employees informing them that they would be laid off by June 30, 2011, in accordance with Education Code sections 44949 and 44955.

5. On or before March 15, 2011, the District gave notice (layoff notice) to a number of individuals including Respondents that they would be laid off, effective June 30, 2011.

6. Between March 25, 2011 and March 31, 2011, the District served an Accusation, a blank Notice of Defense form, and copies of pertinent provisions of the Government and Education Codes on the individuals, including Respondents, who timely requested a hearing.

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<sup>1</sup> On February 15, 2011, Ms. Ekchian also recommended to the Board: that notice be given to non-permanent (probationary) certificated employees in various teaching and support services positions that they would be laid off, effective June 30, 2011, in accordance with provisions of their collective bargaining agreement (CBA); and that notice be given to all certificated administrators, supervisory employees, confidential employees and staff counsel that they may be released and/or reassigned due to reasons in accordance with Education Code section 44951.

7. At least 2975 individuals timely filed Notices of Defense to determine if there was cause for not reemploying them for the 2011-2012 school year.<sup>2</sup> The District served 2974 of these individuals with Notices of Hearing on April 8, 2011, and served one of these individuals, Karina Pena (#739677), with a Notice of Hearing on April 18, 2011. It was not established that this seven-day notice to Respondent Pena constituted a prejudicial error.<sup>3</sup>

8. At some point between March 15, 2011, and April 8, 2011, the District rescinded the layoff notices sent to 74 individuals. The 74 teachers receiving rescissions of their layoff notices are listed in Exhibit 27, which is incorporated by reference

9. There are 3010 Respondents in this case, 2975 of whom timely submitted Notices of Defense.<sup>4</sup> The remaining 35 Respondents did not timely submit Notices of Defense, but the ALJ granted them leave, in the interests of justice, to participate in the hearing.<sup>5</sup>

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<sup>2</sup> The exact number of individuals who timely filed Notices of Defense was not disclosed by the evidence.

<sup>3</sup> Government Code section 11509 requires the District to deliver Notices of Hearing to all parties at least 10 days prior to the hearing. However, pursuant to Education Code section 44949, subdivision (c)(3), “[N]onsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors.”

<sup>4</sup> The Respondents in this case do not include those individuals whose layoff notices were rescinded as described in Factual Finding 8.

<sup>5</sup> The 35 Respondents granted leave to participate in the hearing were: Latanga Hardy, Sofia Vasserman, Moshira Attalla, Sylvia Avila, Veronica Bard, Margaret Bohlke, Blanca Camara, Lucero Delgado, Michelle Feldman, Christina Gilmore, John Gregory, Michael Griffin, Cassandra Kim, Kathleen Kim, Michele Lemaire, Kaylen Lo, Brooke Lundy, Tracy Martin, Donia Moore, Beatris Moreno, Anna Park, Marcela Picasso, Ryan Quinlan, Yolanda Sands, Anna Sarkisyan, Kristina Shull, Lori Smith, Belinda Toscano, Krystal Ann White, Howard Wilf, Cali You, Cathy Richards, Ellyn Kent, Raquel Chacon, and Nora Murphy.

*Reduction or Elimination of Particular Kinds of Services*

10. The Board's Resolution provides for the reduction/elimination of the following particular kinds of services by the beginning of the 2011-2012 school year:

<u>Particular Kinds of Services</u>	<u>Full-Time Equivalent (FTE) Positions</u>
<u>Permanent Elementary Teachers</u>	<u>3,109</u>
Permanent Secondary/Single Subject Teachers	
Art	83
Business Education	25
Computer Science	5
English	245
Foreign Language	
Spanish	19
French	10
Japanese	3
Health	53
Home Economics	20
Industrial Arts	
Graphic Arts	3
Auto Mechanics	2
Metal Working	2
Woodworking	5
Library Media	85
Music	145
Physical Education	55
Social Studies	215
<u>Secondary Secondary/Single Subject Teachers Subtotal</u>	<u>975</u>
TOTAL Permanent Teachers	4,084
Permanent Support Services Personnel	
Elementary Counselor	20
Secondary Counselor	209
Pupil Services and Attendance Counselors	110
Psychiatric Social Worker	25
Nurses	92
TOTAL Permanent Support Services Personnel	456
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TOTAL	4,540 FTE Positions <sup>6</sup>

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<sup>6</sup> The Resolution pertaining to permanent employees also provides for the reduction or elimination of three Assistant General Counsel/Staff Counsel positions, bringing the total permanent employees subject to layoff to 4,543.

11. The services identified in the Board's Resolution are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. (See also Legal Conclusion 2.)

12. Prior to the adoption of the Board's Resolution, the District considered all known attrition in determining the number of layoff notices to be served on its employees. The District continued to consider positively assured attrition through March 15, and has continued to consider attrition occurring thereafter.<sup>7</sup>

13. The decision to reduce the particular kinds of services was based on a fiscal solvency problem related to the current state budget crisis, due to which the District has an operating deficit in the hundreds of millions of dollars. The Board has determined to reduce its budget next year, in part by reducing particular kinds of services.<sup>8</sup>

14. The reduction or elimination of the 4,540 FTE positions will not reduce services below mandated levels. (See Factual Finding 17, below, specifically addressing nursing services.)

15. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

16. The reduction or elimination of the identified particular kinds of services relates solely to the welfare of the schools in the District and its students.

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<sup>7</sup> In a layoff proceeding like this, a governing board need only consider positively assured attrition that occurs prior to the March 15th layoff notice deadline, not thereafter. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 635.)

<sup>8</sup> This Factual Finding was established through stipulation of counsel. Several weeks into the evidentiary hearing, Respondent's counsel sought to withdraw this stipulation and to present contrary evidence, noting that the news outlets had reported that additional, recently discovered monies were available to the State which could be used to fund education. However, the ALJ denied the request to present such evidence because: (1) there was no evidence that any of the discovered funds had been made available to the District yet, (2) the focus of this evidentiary proceeding is the propriety of the Resolution at the time it was adopted, and (3) any monies later provided to the District could affect rehiring, but do not impact the necessity of the Resolution, which is, in part, the subject of this layoff proceeding.

### *Nursing - Meeting Mandated Levels*

17(a). The District currently employs 550 nurses. Of that number, 92 permanent nurses and 26 non-permanent nurses (totaling 118) are subject to layoff. Respondents argue that the District may not lay off nurses and continue to provide mandated State services. This argument was not persuasive.

17(b). Currently, every school site has nursing assistance. However, a nurse is not present at every school site on every school day; typically, a nurse will be at each school site for at least one day of the week. This has been the norm for the past three years.

17(c). There are certain health screening requirements mandated by the State. Hearing testing is required for every student (Ed. Code, § 49452); vision appraisal is required upon enrollment and at least every three years thereafter until eighth grade (Ed. Code, §§ 49452 and 49455); and scoliosis screening is required for seventh grade females and eighth grade males (Ed. Code, § 49452.5). The District employs about 20 audiometrists who currently conduct the hearing screening, as authorized by statute. (Ed. Code, § 49454.) Although nurses currently conduct vision screening, this can be done by other trained and authorized personnel. (Ed. Code, § 49452.) Scoliosis screening is conducted by nurses, but that screening occurs only once in a pupil's enrollment in the District. Additionally, scoliosis screenings may be conducted by physicians, by an outside contracted agency, or by other trained personnel supervised by a nurse, a physician or by an outside contracted agency. (Ed. Code, § 49452.5.)

17(d). Nurses perform other duties which other staff members also perform, such as administration of medication. (Ed. Code, § 49423.) Additionally, the District employs other health care professionals, such as 400 health care assistants who, under the supervision of nurses or physicians, can provide a number of interventions such as catheterization, gastric tube feeding, suctioning and other services that require medically-related training. (Ed. Code § 44923.5.) Furthermore, the five physicians currently employed by the District may serve in a variety of roles including supervision of practitioners and other health care assistants.

17(e). The District established that it will be able to provide all of the mandated services after the reduction in the number of nurses. The provisions creating mandates for health services (e.g., Ed. Code, §§ 49452 (sight and hearing assessments); 49455 (vision appraisal on enrollment and every third year until eighth grade); and 49452.5 (scoliosis screening for seventh grade girls and eighth grade boys) do not require that the mandated services be provided exclusively by certificated nurses, and Respondents have not cited any provision of law that mandates employment of nurses for these services. Additionally, Respondents have not shown that the delegation of duties would result in services falling below the mandated levels. Services will continue to be provided by authorized individuals, some under the supervision of a nurse. The hearing screening is already being conducted by audiometrists, and Respondents' nurse representative admitted that many of the other mandated services can be provided by trained personnel or personnel with other health certifications, albeit under the supervision of a nurse or physician. There was no evidence

that the supervision of these authorized personnel would be inadequate following the reduction in nurses. Accordingly, the District has established that it will provide mandated health services for the 2011-2012 school year, and that such services will not fall below mandated levels.

### *The Seniority List*

18(a). The CBA defines an employee's seniority date as "the employee's initial probationary service date," which in turn is defined as "the actual beginning of the probationary assignment and not any date of a substitute or temporary assignment which was later deemed to be probationary service for purposes of acquiring permanent status." However, the District's permanent employees are laid off based on their "RIF" seniority dates, which the District defines as the employees' first date of service under a contract of employment.<sup>9</sup> In an effort to comply with *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, the District determines RIF seniority dates by giving credit to employees who previously served under "provisional" contracts so that they receive credit for all time served under contracts of employment.

18(b). In developing the Seniority List for layoff of its permanent employees, the District used RIF seniority dates. The District's Seniority List contains certificated employees' names, employee numbers, RIF seniority dates, current assignments and locations, credentials and authorizations, and other pertinent information. The Seniority List was developed using information from the District's electronic database which contains official District personnel records. Staff for the Human Resources (HR) Division maintains, regularly reviews and audits the information in the database. Last year and this year, the District offered employees opportunities to review the information contained in the Seniority List and to verify its accuracy. The District sent rosters to each school site, and the principals and/or supervisors reviewed the rosters with certificated employees to have them verify or correct the information and sign the roster. The signed rosters were returned to the HR Division.

19. With some exceptions noted below (Factual Findings 67, 68, 71 and 72), the information on the Seniority List is accurate.

20. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various particular kinds of services being reduced. The District also used the Seniority List to determine which employees were eligible to "bump" less senior employees assigned to provide services that the senior employees were certificated and competent to render.

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<sup>9</sup> Because the CBA-defined seniority date would continue to be utilized for other purposes under the CBA (e.g., transfer rights and matrix rights), the District uses the term "RIF" seniority date only when referring to the seniority date utilized for reduction in force purposes.



21(a). The District determined that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render.

21(b). At the evidentiary hearing, the District admitted that Ramiro Gutierrez (#710330; RIF seniority date 10/24/06) was not provided with a layoff notice although he should have received one as a social studies teacher with low seniority.<sup>10</sup> There are other Respondents who are social studies teachers more senior to Mr. Gutierrez and who have not had their layoff notices rescinded. The most senior Respondent social studies teacher who has not yet had his/her layoff notice rescinded should have his/her notice rescinded. (See also Legal Conclusion 8.)

### *Tie-Breaking Criterion*

22(a). The Board's Resolution also established a tie-breaking criterion to determine the relative seniority of certificated employees who first rendered paid service on the same date. According to the Resolution, the order of layoff in such situations will be based on the employees' seniority numbers, as determined by Article XI, Section 6.2 of the CBA.

22(b). Pursuant to the CBA, the last five digits of an employee's seniority number are computed by a specified formula utilizing the last four numbers of the employee's Social Security Number. When comparing employee numbers, the lower employee number is deemed to be more senior.

22(c). For layoff purposes, the District could have adopted tie-breaking criterion that differed from that set forth in the CBA. However, there is no requirement that it do so, unlike the situation with seniority dates, where the RIF seniority dates differ from the CBA seniority dates in order to comply with *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260). Although other districts may have tie-breaking criteria which include consideration of the employees' number of credentials and college degrees before a final criterion of a random lottery is used, the District is not required to utilize all of these criteria. Due to the size of the District, there are often ties between hundreds of employees, so the numeric formula is used for efficiency, transparency and certainty. Employees know their tiebreaker number at their time of hire, and their relative seniority is fixed so they can anticipate their standing in any layoff proceeding. Given the foregoing, the tie breaking criterion, as agreed to in the CBA, was an objective and

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<sup>10</sup> Mr. Gutierrez was originally issued a layoff notice as an elementary school teacher, but the District later discovered that he was actually teaching social studies. The District rescinded Mr. Gutierrez's layoff notice, but did so erroneously and inadvertently, since he remained subject to layoff as a social studies teacher.

reasonable exercise of the Board's discretion and is based on the needs of the District and its students.<sup>11</sup>

23. Although the last five digits of employees' seniority numbers were placed on the Seniority List, the District did not apply the tie-breaking criterion to resolve ties among employees with the same seniority date because such a determination was not necessary to determine who was subject to layoff. It was not established that any Respondent was included in this layoff proceeding based on the application of the tie-breaking criterion, and the District was not required to apply the tie-breaking criterion prior to the hearing.<sup>12</sup>

### *Competency Criteria*

24(a). The Board's Resolution also established a definition of competency for purposes of allowing an employee currently assigned in a position subject to layoff to "bump" a less senior employee holding another position not subject to layoff. For bumping purposes, an employee was "competent" to render a service if:

- a. the employee possesses an appropriate credential for 2011-2012 assignment, and
- b. has at least one (1) year of full-time-equivalent experience within the District within the preceding five (5) years serving in the subject area of the assignment. For purposes of competency, "one (1) year of full-time-equivalent experience" shall mean having had an assignment in the subject area for at least 75 % of the days during the qualifying school year.

24(b). For purposes of calculating the "preceding five (5) years," the District includes the current school year, since the assignment into which the employee may seek to bump would be for the 2011-2012 school year. By way of stipulations of the parties, at least one

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<sup>11</sup> Education Code section 44955, subdivision (b), provides that the order of termination (i.e. tie-breaking criteria) must be determined "solely on the basis of needs of the District and the students thereof."

<sup>12</sup> Appellate courts have not required school districts to apply tie-breaking criteria prior to issuing layoff notices. (*Zalac v. Ferndale Unified School District* (2002) 98 Cal.App.4th 838, 855.) One court approved the process of applying the tie-breaking criteria during the hearing when doing so became necessary. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 143-44.)

employee has qualified to bump into a position for the 2011-2012 school year based on her serving in the subject area of the assignment during the current school year.<sup>13</sup>

25. The District's five-year recency requirement is deemed reasonable, and the inclusion of the current school year in the five-year recency requirement is also deemed reasonable. Therefore, the District's definition of competency in determining bumping rights (i.e. whether Respondents who received layoff notices may exercise their statutory right to bump into a position held by a less senior employee not subject to layoff) is upheld.<sup>14</sup>

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<sup>13</sup> Kimberly Balala (#773219), assigned as a library media teacher, fulfilled the five-year recency criterion to bump into a social studies position by virtue of the single period of social studies she is currently teaching.

<sup>14</sup> If a permanent teacher is “certificated and competent” to render a service provided by a more junior employee, the senior teacher is statutorily entitled to bump into the junior employee’s position and cannot be laid off. (Ed. Code, § 44955, subd. (b).) A school district has the authority and the discretion to establish competency criteria that relate to the skills and qualifications of a teacher for purposes of determining bumping rights. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 563-567.) This discretion is limited only by a reasonableness standard (i.e. the district’s criteria must be reasonable, and not fraudulent, arbitrary or capricious). (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 808.) Moreover, courts have held that this reasonableness standard permits “a difference of opinion on the same subject.” (*Id.*) A district’s competency criteria may include a recency requirement. (*Duax, supra*, 196 Cal.App.3d at 567 (approving a recency requirement of “one year of teaching in the last ten”).) Additionally, a court has suggested, without directly addressing the point, that a recency requirement of one year experience within the past five years is a valid criterion for determining a teacher’s competency. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127.)

*The Superior Court Judgment in Reed v. State of California – Skipping Reed Teachers*

26(a). The Board’s Resolution also determined that it was necessary to retain the services of certain classroom teachers at 45 specified schools for the 2011-2012 school year, regardless of seniority (also known as skipping), “pursuant to judicial orders issued in the matter of *Sharail Reed, et al. v. State of California*.”

26(b). The Resolution required:

RIF notices that would have been sent to skipped teachers at [the 45 specified schools] shall be redirected to teachers based on District seniority order at schools that would have otherwise received less than the district-wide average (by percentage) of RIF notices, but in no case shall redirected RIF notices cause a school to exceed the district-wide average of RIF notices, per Court-approved terms in the *Reed* case.

27. On February 8, 2011, Judge William F. Highberger of the Superior Court of the State of California, County of Los Angeles, in Case Number BC 432420, issued a Judgment approving the terms of the settlement in *Reed, et al. v. State of California, et al.* (*Reed* Judgment) based on detailed Findings of Fact and Conclusions of Law. In the *Reed* Judgment, the Court reserved “exclusive and continuing jurisdiction over the Action, Plaintiffs, the Settlement Class Members, LAUSD, the Partnership, and [United Teachers of Los Angeles (UTLA)] for purposes of supervising the implementation, enforcement, construction, and interpretation of the Agreement, the Court’s Findings of Fact and Conclusions of Law and this Judgment.” According to the *Reed* Judgment, pursuant to Education Code section 44955, subdivision (d)(2), the District may not impose any budget-based layoffs of classroom teachers at 45 specified schools (*Reed* schools). The *Reed* Judgment was based on findings that the layoff of the certificated staff in question would deprive particular students of their constitutional right to a fair education. In its Findings of Fact and Conclusions of Law, the Court noted that UTLA was a party to the case, participated in settlement negotiations and was given an opportunity to present its arguments and establish why the settlement should not be approved. UTLA appealed the *Reed* Judgment and unsuccessfully sought a stay in the Superior Court and the Court of Appeal. The California Supreme Court denied UTLA’s request for review.

28(a). At a prehearing conference in this matter, the ALJ granted the District’s “Motion to Exclude Evidence or Argument regarding issues litigated in *Reed v. State* and to Follow the Court’s Final Order,” and denied Respondents’ “Motion to Prohibit Waiver of Respondents’ Rights under Education Code section 44924” and “Motion in Limine,” requesting that the *Reed* Judgment not be followed in this proceeding.

28(b). As stated in the ruling at the PHC: The Superior Court has determined that it has jurisdiction to issue the *Reed* Judgment approving the skipping of teachers at 45 specified *Reed* schools. The District is bound to comply with the *Reed* Judgment, and the ALJ lacks jurisdiction to require the District to contravene the *Reed* Judgment. Arguments regarding

the application of Education Code section 44955, subdivision (d)(2), in relation to the skipping of teachers at the 45 *Reed* schools, and its effects on teacher seniority rights, were addressed by the Superior Court, and the ALJ declines to address any arguments regarding the propriety of the *Reed* Judgment. Any issues regarding the District's compliance with the *Reed* Judgment should be addressed to the Superior Court which has retained jurisdiction, and any issues regarding the propriety of the Superior Court's judgment should be addressed to the Court of Appeal, not to the ALJ. It is noted that, in addition to declining to contravene the *Reed* Judgment, this ALJ also declines to apply it beyond its scope.<sup>15</sup>

29. As required by the *Reed* Judgment, the District must deviate from seniority in a limited manner in that no classroom teachers at any of the 45 *Reed* specified schools shall be included in the 2011 layoff. According to the *Reed* Judgment, to ensure that the skipping of the *Reed* teachers does not negatively affect students at other "vulnerable" schools, the redirected layoff notices were to be "sent on a seniority basis to teachers at LAUSD schools that would otherwise receive less than district-wide average [layoff] notices." Additionally, the *Reed* Judgment specified that, although the District was prohibited from imposing any "budget-based" layoffs of the *Reed* teachers, the mandated skipping did not apply to either displacements (i.e. elimination of a teacher's position at a school site) as a result of district wide class size increase, declining enrollment or termination.

30. Given the District's uncertainty regarding whether the ALJ would uphold the *Reed* Judgment and the uncertainty regarding possible issues of displacement, teachers at the *Reed* schools received "precautionary" preliminary layoff notices stating:

As you may be aware, the Los Angeles Unified School District continues to face a dire financial situation. While the District hopes that solutions may be found to mitigate this crisis, it is with sincere regret that I must send you this letter at this time.

The District has initiated formal proceedings to lay off a number of probationary and permanent employees based on a reduction or discontinuance of particular kinds of services. Pursuant to judicial orders issued in the matter of Sharail Reed, et al. v. State of California, et al., the District has determined to "skip" classroom teachers at forty-five (45) qualifying District schools. This means that the District seeks to exempt these employees from layoff for the 2011-2012 school year regardless of seniority.

You are assigned as a classroom teacher at a school affected by the Reed lawsuit. Therefore, the District has identified you as one of the employees to be "skipped" during this layoff process. You continue to

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<sup>15</sup> Respondents have raised no new matter in their closing brief or closing argument that would warrant a reversal of the ALJ's prior ruling.

be subject to displacement as a result of District-wide class size increases, declining enrollment, or termination for cause.

Although the District believes that the skipping criteria is valid, the District anticipates challenges to the skipping criteria.

If for any reason the skipping criteria is held unenforceable you will be subject to layoff. Therefore, you are being given the following notice which applies to permanent employees who are to be released pursuant to the layoff provisions of Education Code sections 44949 and 44955. You are also being offered all of the rights and duties set forth in the notice. However, some of those rights may be waived if you do not take timely action.

If the skipping criteria is held valid, and you are not displaced and laid off from employment, the District will provide you with a notice of assignment prior to June 30, 2011.

#### Layoff Notice

This letter constitutes notice to you that the Governing Board of the Los Angeles Unified School District has authorized a reduction in force of personnel effective the close of June 30, 2011.

Pursuant to Education Code Sections 44949 and 44955, you will be laid off effective the close of June 30, 2011. As an additional notification to you, there is no probationary or permanent certificated employee with less seniority who will be retained to render service which you are certificated and competent to render, unless otherwise permitted by law.

In accordance with the provisions of Education Code Sections 44949 and 44955, you may request a hearing to determine whether there is cause for the layoff. A request for a hearing must be in writing and must be received by the undersigned on or before March 22, 2011 by 5:00 p.m., which is not less than seven days after this notice was sent to you. A form to request a hearing is enclosed for your convenience. Copies of Sections 44949 and 44955 are also enclosed for your information and reference.

If you fail to request a hearing on or before March 22, 2011, your failure to do so shall constitute a waiver of your right to a hearing. You need not request a hearing or appear at the hearing in order to retain the reemployment rights guaranteed by Education Code Section 44956.

If you do request a hearing, future notices will be sent to you regarding your rights and obligations. Failure to timely respond to these notices may constitute a waiver of your right to a hearing or may otherwise adversely impact your rights.

31(a). At the PHC, the ALJ ordered the District, by April 18, 2011, to rescind the precautionary notices issued to any teachers protected from layoff by the *Reed* Judgment after any displacements were ascertained. When the rescission order was made at the PHC, it was with the understanding that the District would be able to ascertain displacement information prior to the evidentiary hearing and dismiss *Reed* precautionary notices. However, the District was unable to ascertain which *Reed* Respondents would be displaced prior to the evidentiary hearing. At the evidentiary hearing, the ALJ denied Respondents' Motion to Dismiss the Precautionary Notices, noting that if junior *Reed* teachers were displaced, they became part of the pool of teachers subject to the budget-based layoff, where the seniority provisions of the Education Code control the order of layoff.

31(b). Since Respondent's case-in-chief commenced before the District was able to ascertain which *Reed* teachers would be displaced, the ALJ ordered that: (1) there would be a rebuttable presumption that no displacements would occur, and (2) even if the presumption was rebutted, the District would not be allowed to present evidence regarding the need to skip any displaced *Reed* teachers.

31(c). The presumption was rebutted. During the course of the evidentiary hearing, after receiving the budget information from all school sites, including the *Reed* schools, the District determined which of the junior *Reed* school teachers would be displaced to schools other than the *Reed* schools. Since they would be outside the scope of the *Reed* Judgment, those teachers would remain subject to layoff, and their precautionary notices were not rescinded.

#### *Rescinded Layoff Notices*

32. During the hearing, the parties stipulated that the District would rescind the layoff notice and Accusation served on Respondent Moises Flores (#760045), who was inappropriately noticed for layoff.

33. During the hearing, the parties stipulated that the District would rescind the layoff notice served on Respondent Victoria Overbey (# 803980), who was "over-noticed" for layoff.

34. Pursuant to the *Reed* Judgment, Madison Middle School (Madison) received 11 redirected layoff notices. Denise Piscitello (#759977) received the eleventh and final redirected notice at Madison. However, Patricia Baker, who is less senior than Respondent Piscitello, should have received the final redirected notice, but did not. Since Respondent Piscitello should not have received a layoff notice, the District rescinded the layoff notice and Accusation served on Respondent Piscitello.





37(a). During the hearing, the parties stipulated that:

(1) in light of a tentative agreement between the District and UTLA, the District will rescind the layoff notices of all of the Library Media teachers except Lilia Abagi (#932104), Cynthia Bianchi (#200290), Marcy Drexler (#775109), Laureen Keough (#703441), Jacqueline Kogan (#954511), Janet Larson (#790013),<sup>18</sup> Kim Leng (#777062), Kathleen Sheppard (#804295), Leslie Sipos (#140479), and Tamarin Wood (#804011)<sup>19</sup>; and

(2) all of the Library Media teachers who testified in this proceeding fall within the list of Library Media teachers whose layoff notices will be rescinded.

37(b). The Library Media teachers who testified at hearing and whose layoff notices will be rescinded are as follows: Michelle Addison; Susan Baranich; Steven Belton; Sandra Beltran-Mata; Michael Bernard; Melinda Buterbaugh; Laurel Bullock; Roza Besser; Rosemarie Bernier; Mary Byrne; Leslie Caldarera; Kenneth Completo; Dale Futoran; Pauline Neilly; Adam Frankel; Oscar Gonzalez; John Hamrick; Laura Graff; Adalgisa Grazziani; Rebecca Karres; Karen Gonzalez; Rhys Kuzmich; Suzanne Osman; Melodee Lydon; Sylvia Calderon Mastros; Tamara Celi; Stephanie Lawrence; Henri Perkins; Maria Rangel; Stacia Salanoa; Shan Jia; Sandra Lagasse; Consuelo Abad; Fernando Navarro; Cynthia Williams; Jon Weinberg; Sherri Whitham; Melissa Mukai; Valary White; Patricia Young; Linda Roche; Allison Walker; and Nora Murphy.

37(c). Alessaundra Mills, a Library Media teacher who appeared at the hearing and who entered into a partial stipulation without testifying, also falls within the list of Library Media teachers whose layoff notices will be rescinded.

38(a). During the hearing, the parties stipulated that the following Respondents are competent to bump into the specified service areas/alternate courses and that they will not remain where they are currently serving but will teach in the new service areas/alternate courses: Angeline Hernandez (#734906) from CNE to CNS; Lesleigh Alchanati (#617464) from LIB to ELR; Paul Farbman (#280803) from LIB to ENG; Cheryl Guerbaoui (#574695) LIB to ENG; Glen Martinez (#662048) from LIB to ENG; Elizabeth Holloway (#700107) from LIB to ENG; Krystoff Przykucki (#762135) from ELR to ENG; Pauline Otoole Gascon (#770625) from ELR/ALT to ENG; Beatrice Raskin (#770879) from SEC/ALT to ENG; Jacqueline Cardona (#782309) from ELR to ENG; Ruth Brazalovich Mischkot (#788620) from ELR to ENG; Jade Ellis (#770664) from LIB to ENG; Carl Finer (#788484) from ESL to ENG/SST; Joyce Aguebor (#288819) from ELR to JEN; Legdrena Bennett (#575820)

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<sup>18</sup> However, Respondent Larson was the subject of another stipulation (See Factual Finding 42) which allowed her to bump into a social studies position, thus resulting in the rescission of her layoff notice.

<sup>19</sup> However, Respondent Wood was the subject of another stipulation (See Factual Finding 39) which allowed her to bump into a English position, thus resulting in the rescission of her layoff notice.

from COH to JEN; Eleanor Walker (#678960) from COH to JEN; Judy Daley (#683425) from ELR to JEN; Robert Baron (#703906) from ELR to JEN; Cecily Vizas (#712311) from SST/MA to JEN; Virginia Dominguez (#743805) from ELR to JEN; Diana Minard (#762042) from ELR to JEN; Thuy Doan Nguyen (#779052) from ELR to JEN; Randi Seligson (#779091) from ELR to JEN; Rebekah Shibley (#780220) from ELR to JEN; Nicholas Kapp (#781810) from ELR to JEN; Kathleen Grimm (#782322) from ELR to JEN; Tracy Townsend (#790001) from ELR to JEN; Eric Tavis (#789771) from ELR to JEN/JSC/JSS; Bobbie Isom (#788603) from ELR to JEN/JSS; Erika Romero Arciniega (#641981) from ELR to JMA; Veronica Torres (#694049) from ELR to JMA; Xiomara Antoine (#711700) from ELR to JMA; Leticia Lopez (#729665) from MAT to JMA; Danielle Rivlin (#743513) from ELR to JMA; Vanessa Luna (#756771) from ELR to JMA; Rodolfo Hernandez (#771325) from ELR to JMA; Rynne Gardner (#777430) from ELR to JMA; William Kulencavich (#778809) from ELR to JMA; Hyon Kim (#782340) from ELR to JMA; Jennifer Geidel (#789085) from ELR to JMA; Shauna Segal (#782315) from ELR to JMA/JSC; Bryan Stewart (#957574) from ELR to JSC; John Stephens (#780202) from ELR to JSS; Maria Saucedo (#781844) from ELR to JSS; Carlos Santana (#782252) from ELR to JSS; Peter Anderson (#794737) from ELR to JSS; Jesus Landazuri (#795081) from PERM ELEMENTARY to MAF; Antonio Novoa (#664143) from PERM SOCIAL STUDIES to MAT; Nancy Chau (#759549) from ELR to MAT; Hyun Park (#788439) from ELR to MMD; Lisa Alvarado (#767692) from HTH to PEA; Erin McNulty (#771147) from PERM HEALTH to SBS; Michael Connor (#926269) from PERM SOCIAL STUDIES to SBS; Annette Scherr (#542647) from LIB to SCB; Claire Anton (#788390) from ELR to SCI; Erik Matsubayashi (#782020) from ELR to SIF; Garry Joseph (#789370) from JSC/ED CODE to SIF; Ashima Vohra (#805981) from ELR to SIF; Albert Estrada (#809313) from ELR to SIF; Karl Sanchez (#644867) from CRD to SIF/SST; Allen Koochof (#712904) from ELR to SST; Monique Greenberg (#756345) from PERM HEALTH to SST; Jennifer Ohlund (#788577) from ELR to SST; Mary Wroblewski (#805040) from HTH/SCI to SBS; Erin Smale (#935461) from HTH/SCI to SBS; Janice Wald (#531038-6) from ENG to SST; Steven Kent (#757063) from BUS to CSC; Deborah Garcia (#772574) ELR to ENG or SST; Andrea Kostas Gioulis (#777113) from SST to JMA; Robert Andrews (#773016) from BUS to either Chem or CSC; Kimberly Balala (#773219) from LIB TO SST; Jay Cherney (#287814) from ELR TO SPE; Lisa Gutierrez (#718673) from LIB to ELR; Deanna Jones #726692) from LIB to ELR; Judy Klein (#788825) from ELR to CSC; Sofia Vasserman (#603875) from ELR to CSC; John Stoffers (#682376) from LIB to ELR; Marc McPhee (#643485) LIB to CSC; Joseph Kalala (#718094) FLF to SST; Kamilah Jackson (#778076) from LIB to ENG; Jake Guthrie (#974063) from PEA to JMA; Maria Alonzo (#804548) from BUS to CSC; Heidi Johnson (#761526) from LIB to ART; Howard Spike (#152821) from BUS to SST; Reatha Powery (#723444) from BUS to CSC; Talya Simonian (#809178) from BUS to CSC; Mariam Fotolyan (#674560) from BUS to CSC; Michael Jaquias (#799993) from BUS to CSC; David Ifergan (#737284) from BUS to CSC; Romelia Valiquette (#719220) from ELR to JMA; Cindy Magyar (#809204) from ELR to SBS; Penelope Valdez (#713143) from LIB to SBS; Matthew Holtzman (#956831) from HTH to SIF; Michelle Hogan (#793903) from PSA to CNS; and Angeline Hernandez (#734906) from CME to CMS.



## *Bumping Applied to Teachers*

42. Phillip Koch and Janet Larson. After the last day of testimony, but prior to oral argument, the District confirmed that, due to the rescission of *Reed* precautionary and redirected notices, the layoff cut-off date for social studies had moved. Therefore, the District agreed that both Respondent Phillip Koch (#545284) and Respondent Janet Larson (#790013) are certificated and competent, and have sufficient seniority, to bump into social studies (SST) positions.<sup>20</sup> Consequently, the Accusations against Respondents Koch and Larson should be dismissed, and they should not be issued a final layoff notices.

43. Kathleen Hickman. During the hearing, the parties stipulated that Kathleen Hickman (#799782) meets the competency criteria to teach English, but does not have sufficient seniority to bump into an English position. Respondent Hickman did not establish that she has sufficient seniority to bump into an English position.

44(a). Walter Rodriguez. In lieu of testimony, the parties stipulated to the following facts: Walter Rodriguez (#780426) has a RIF seniority date of August 28, 2003. He is assigned to Stephen White Middle School. He holds a clear multiple subject credential, a supplemental mathematics credential and a Cross-cultural, Language and Academic Development (CLAD) authorization. He obtained his credential to teach mathematics and registered it with the District prior to March 15, 2011. However, he has not taught mathematics in the District. Respondent Rodriguez did not establish that he meets the competency criteria required to bump into a mathematics position.

45(a). Hector Hernandez. Respondent Hector Hernandez (#706754) has been working for the District since 2008 as a counselor. He seeks to bump into a mathematics position based on his prior experience teaching mathematics in another school district. He has not taught mathematics in the District.

45(b). Respondent Hernandez argued that, because he was found competent to teach mathematics in the 2010 layoff proceeding, this finding is res judicata. However, the 2010 determination that Respondent Hernandez was competent to teach mathematics was based on the ALJ invalidating the District's competency criteria (the 1-in-3 recency requirement) in

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<sup>20</sup> Both Respondents Koch and Larson have RIF seniority dates of September 2, 2005. The District originally stipulated that both Respondents Koch and Larson met the competency criteria to bump into a social studies position, but lacked sufficient seniority to bump into those positions. Thereafter, the District rescinded all the *Reed* redirected layoff notices for the social studies teachers with a September 2, 2005 RIF seniority date. The District also rescinded the *Reed* redirected RIF notices for Wilfrido Magana (#643805; RIF seniority date 9/6/05) and Nelson Obregon (#79834; RIF seniority date 9/9/05), both of whom had less seniority than Respondents Koch and Larson. Respondents Koch and Larson are certificated and competent, and now have sufficient seniority, to bump into social studies positions.

that proceeding. Respondent Hernandez does not meet the current competency criteria, which requires experience teaching in the subject area within the District. Respondent Hernandez did not establish that he meets the competency criteria required to bump into a mathematics position.

46. Roger Wilson. Respondent Roger Wilson (#266015) is serving as a health teacher, but seeks to bump into a science position. He has a life credential in physical education with a supplementary authorization in health science. He previously held a supplementary authorization in general science, which he allowed to lapse many years ago. After being served with a layoff notice as a health teacher, he applied for reinstatement of his supplementary authorization in general science, and obtained reinstatement on June 2, 2011. However, he has not taught any science courses in the past five years. Respondent Wilson did not establish that he is competent to bump into a science position.

#### *Bumping Applied to Counselors*

47(a). The counselors who received layoff notices as elementary school counselors and as Pupil Services and Attendance (PSA) counselors sought to maintain their positions by virtue of their relative seniority to all counselors (including secondary counselors). They argued that there is no distinction between counseling positions by virtue of their identical Pupil Personnel Services (PPS) credential authorizing them to provide counseling services in grades K through 12. However, this argument was not persuasive.

47(b). While their credential may authorize them to perform certain services, this does not automatically mean that they are performing those services. Based on the counselors' testimonies, elementary counselors and PSA counselors do not perform all of the same duties as secondary counselors -- e.g. master scheduling; tracking graduation credits and A through G college entrance requirements; and advising students regarding the California High School Exit Examination (CAHSEE) and the Scholastic Aptitude Test (SAT). Several of the elementary counselors were unfamiliar with the duties of secondary counselors, and at least one elementary counselor and one PSA counselor did not know what the CAHSEE was. Consequently, the District's distinction in classification between elementary counselors, PSA counselors and secondary counselors was reasonable.

47(c). Given the distinction between the classifications, those counselors seeking to bump into secondary counseling positions must meet the District's competency criteria. All of the counselors who testified established that they were "certificated" to bump into secondary counseling positions. However, the counselors' possession of a PPS credential does not automatically render them competent to provide services as a secondary counselor. They are also required to meet the recency requirement of the District's competency criteria; that is, they must have one year of full-time-equivalent experience within the District within the preceding five years "serving in the subject area of the assignment" (i.e. serving a secondary counseling position).

48. Megan Brown. During the hearing, the parties stipulated that Respondent Megan Brown (#690347) is a PSA counselor who meets the competency criteria for a secondary counseling position, but does not have sufficient seniority to bump into a secondary counseling position. Respondent Brown did not establish that she has sufficient seniority to bump into a secondary counseling position.

49. Kathy Torres and Nicole Mitchell. During the hearing, the parties stipulated that Respondents Kathy Torres (#754397) and Nicole Mitchell (#712268) meet the competency criteria for secondary counseling positions, but do not have sufficient seniority to bump into secondary counseling positions. Respondents Torres and Mitchell did not establish that they have sufficient seniority to bump into secondary counseling positions.

50. Linet Danoukh and Jennifer Rios. During the hearing, the parties stipulated that Respondents Linet Danoukh (#779869) and Jennifer Rios (#809347) are PSA counselors who meet the competency criteria for secondary counseling (CMS) positions, but do not have sufficient seniority to bump into secondary counseling (CMS) positions. Respondents Danoukh and Rios did not establish that they have sufficient seniority to bump into secondary counseling positions.

51. Emilia Zarookian. During the hearing, the parties stipulated that Respondent Emilia Zarookian (#769488) meets the recency requirement to bump into a Least Restrictive Environment (LRE) counselor position (Class Code 0506), but does not have sufficient seniority to bump into an LRE counselor position. Respondent Zarookian did not establish that she has sufficient seniority to bump into an LRE counselor position.

52. Brenda Rhue-Long. During the hearing, the parties stipulated that Respondent Brenda Rhue-Long (#771633; RIF seniority date 6/11/07) meets the competency criteria to bump into an LRE counselor position, but does not have sufficient seniority to bump into an LRE counselor position. Respondent Rhue-Long did not establish that she has sufficient seniority to bump into an LRE counselor position.

53. Susan (Naber) De La Pena. Respondent Susan (Naber) De La Pena (#760590; RIF seniority date 7/1/02) worked for the District as a secondary counselor from July 1, 2002, until January 2006. At that point, she began providing services as an elementary school counselor, and has continuously provided services as an elementary school counselor since the beginning of the 2006-2007 school year. She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Despite her prior experience, Respondent De La Pena did not establish that she meets the specified competency criteria required to bump into a secondary counseling position.

54. Margaret Mulder. Respondent Margaret Mulder (#228657; RIF seniority date 8/28/03) is currently assigned as an elementary counselor. During the 2008-2009 school year (four days per week) and the 2009-2010 school year (2 to 3 days per week), she was assigned as a counselor at Utah Avenue School (Utah), which spans kindergarten through eighth

grade. While working at Utah, she had some limited experience interacting with students in sixth, seventh and eighth grade (e.g. she helped with middle school students during a lock down; she participated in a college career day; and she conducted an anti-bullying survey, meeting with seventh and eighth grade students over 10 partial days to administer the survey). However, her “major focus” was the elementary grades, and she generally worked with students in kindergarten through fifth grade. She did not establish that she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Mulder did not establish that she meets the competency criteria required to bump into a secondary counseling position.

55. Ana Romero. Respondent Ana Romero (#718040) has been working as an elementary school counselor for the District since November 2004. During her employment with the District, she has never served as a secondary counselor. She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Romero did not establish that she meets the competency criteria required to bump into a secondary counseling position.

56. Claudia Armstrong. Respondent Claudia Armstrong (#760170; RIF seniority date 10/22/01) has been working as an elementary school counselor for the District since October 2001. She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Armstrong did not establish that she meets the competency criteria required to bump into a secondary counseling position.

57. Tami Friedkin. Respondent Tami Friedkin (#632596) has a RIF seniority date of August 30, 2001. She was originally hired as a secondary counselor, but has been assigned as an elementary school counselor for the past five years. She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Friedkin did not establish that she meets the competency criteria required to bump into a secondary counseling position.

58. Martha Gonzalez-White. Respondent Martha Gonzalez-White (#742701; RIF seniority date 9/14/00) has been an elementary school counselor since she began working in the District in 2000. She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Gonzalez-White did not establish that she meets the competency criteria required to bump into a secondary counseling position.

59. Monique Cooper. Respondent Monique Cooper (#749470; RIF seniority date 3/9/01) has been an elementary school counselor in the District for the past five years. During the decade she has worked for the District, she has never been assigned to a secondary school. She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in

the area of secondary counseling. Respondent Cooper did not establish that she meets the competency criteria required to bump into a secondary counseling position.

60. Cynthia McKinnon-Spurling. Respondent Cynthia McKinnon-Spurling (#260195) is an elementary counselor. For the 2006-2007, 2007-2008, 2008-2009, and 2009-2010 school years, she was assigned only to elementary schools. She is currently assigned (for the 2010-2011 school year) to three schools: Vernon Avenue Elementary, one day per week; 109th Street Elementary, two days per week; and Caroldale Learning Community, two days per week. Caroldale Learning Community serves students from kindergarten through eighth grade. Although she identifies herself in documents (resume and signature line for letters) as an elementary counselor, Respondent McKinnon-Spurling provides services to both elementary and secondary students at Caroldale (e.g. she deals with student behavior, curriculum, assigning classes, meeting parents and community referrals for both elementary and secondary students at Caroldale). However, she only provides two days of counseling services per week at Caroldale, and during those days she provides counseling to elementary students (K -5) as well as secondary students (6-8). This constitutes less than “75 % of the days during the qualifying school year” providing secondary counseling services. Although Respondent McKinnon-Spurling asserts that she is responsible for the Caroldale students all of the days of the week because she sometimes fields calls regarding those students while at the two other campuses, this assertion was not persuasive and did not support her contention that she meets the requirement of providing secondary counseling services for “at least 75 % of the days during the qualifying school year.” Respondent McKinnon-Spurling did not establish that she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Consequently, she did not establish that she meets the competency criteria required to bump into a secondary counseling position.

61. Oma Ray. Respondent Oma Ray (#756403) has an adjusted RIF seniority date of August 13, 2001. (See Factual Finding 71 regarding adjusted RIF seniority date.) Since 2001, she has worked in the District only as an elementary school counselor. She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Ray did not establish that she meets the competency criteria required to bump into a secondary counseling position

62. Angela Frierson. Respondent Angela Frierson (#703816) has an adjusted RIF seniority date of July 1, 1999 (See Factual Finding 72 regarding adjusted RIF seniority date.) Since joining the district, she has been assigned as an elementary teacher (July 1999 through June 2005) and as an elementary counselor (September 2005 through present). She did not establish that, as an elementary counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Frierson did not establish that she meets the competency criteria required to bump into a secondary counseling position



63. Yvette Zavala. Respondent Yvette Zavala (#632341; RIF seniority date 1/25/05) has been assigned as a PSA counselor in a secondary school (Bret Harte Middle School) for over five years. She holds a PPS credential with authorizations in both School Counseling and School Child Welfare and Attendance. Her Child Welfare and Attendance authorization allows her to provide services as a PSA counselor, which involves addressing students' attendance and truancy issues. She initially testified that she performs the same services as a secondary counselor and that a PSA counselor's and secondary counselor's duties are interchangeable. However, she later noted differences in their duties. For example, secondary counselors answer students' questions regarding class selection and scheduling, which she does not. She has never prepared a master schedule or assigned students to classes. She was unfamiliar with the CAHSEE examination and believed that, if students pass the CAHSEE, they do not have to finish high school. Respondent Zavala did not establish that, as a PSA counselor, she has one year of full-time-equivalent experience within the District within the preceding five years serving in the area of secondary counseling. Respondent Zavala did not establish that she meets the competency criteria required to bump into a secondary counseling position.

#### *Library Media Teachers*

64. As indicated above (Factual Findings 37, 39 and 42), the District rescinded all but 10 of the library media teachers' layoff notices, and also agreed that two of those 10 had the right to bump into alternate positions. Respondents now argue that the remaining eight library media teachers should be retained if they are certificated and competent to bump into a subject area. This assertion is correct. However, while it was established that library media teachers are teachers, that they possess subject matter credentials in addition to their library media credentials, and that they engage in teaching various subjects at various times while discharging their library media teacher responsibilities, this does not mean that they automatically meet the District's competency criteria. The eight library media teachers who remain subject to layoff did not testify, and thus did not contradict evidence of the District's determination that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render. Therefore, the evidence did not establish that each of these individuals is certificated and competent to bump into specific positions. Consequently, the remaining eight library media teachers have not established any basis for rescission of their layoff notices or dismissal of the Accusations against them.

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### *Respondents Seeking to Change Their Seniority Dates*

65(a). Jennifer Preuss. Respondent Jennifer Preuss (#754705) sought to have her RIF seniority date adjusted from September 1, 2006, which is the effective date of her first probationary contract.

65(b). During Respondent Preuss' testimony, the District moved to preclude her testimony and documentary evidence based on the District's prior Motion re: Res Judicata Effect of Final Layoff Notices.<sup>21</sup> The motion was granted in part, and Respondent Preuss was precluded, by the doctrine of res judicata, from presenting any testimony or evidence regarding the effect of her attendance at an August 2006 training session on her RIF seniority date. Any testimony and evidence regarding that issue will not be considered in this decision in determining her RIF seniority date. However, the motion was denied with regard to her claim to adjust her seniority date to October 10, 2005, based on service during the 2005-2006 school year, since this issue was not fully addressed in the 2010 layoff decision.

65(c). The Motion re: Res Judicata Effect was partially granted based on the following:

(1) In 2010 layoff proceeding, Respondent Jennifer Preuss testified that her attendance at an August 2006 new staff professional development should be considered in determining her RIF seniority date (ie. first date of paid probationary service). She relied on a May 2010 letter from her principal stating that the August attendance was mandatory, and on sign-in sheets from the training. In the 2010 Proposed Decision, the ALJ addressed this evidence and found that Respondent Preuss failed to establish a basis for adjusting her RIF seniority date by virtue of the earlier training days. This finding was adopted, and the District's decision was not challenged by Respondent Preuss through any mandamus action in superior court. In this 2011 layoff proceeding, Ms. Preuss sought to testify and present identical evidence regarding whether her attendance at the August 2006 new staff professional development should be considered in determining her RIF seniority date. She presented no new evidence regarding this issue.

(2) Res judicata has been applied to administrative actions. In *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 731-732, the

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<sup>21</sup> At the Pre-hearing Conference, the District filed a Motion re: Res Judicata Effect of Final Layoff Notices Issued in 2010 (Motion re: Res Judicata Effect, marked as OAH 4), seeking to prevent identified employees who received final notices of layoff in 2010 from re-litigating their employment related issues, such as seniority rights, in this 2011 proceeding. The Motion re: Res Judicata Effect was denied without prejudice, because it was unclear at that point whether the issues that may be raised by the identified employees in this new proceeding would be a re-litigation of the same issues that arose in 2010, and that no new evidence had arisen or change had occurred. Although not efficient as a blanket objection, the ALJ allowed the Motion re: Res Judicata Effect to be made on an individual basis, depending on the evidence that the employee sought to present.

California Supreme Court noted that the doctrine of res judicata “can be as important to orderly administrative procedure as to orderly court procedure,” but also noted that “greater flexibility is required in applying the doctrine of res judicata” to administrative determinations. The doctrine of collateral estoppel does not necessarily bar a new hearing on a previously litigated issue, where there was a change of circumstances or new facts. (*Melendres v. City of Los Angeles* (1974) 40 Cal.App.3d 718, 730.) However in this case, no new facts have been asserted.

(3) The rule regarding exhaustion of judicial remedies “is a form of res judicata, of giving collateral estoppel effect to the administrative agency's decision, because that decision has achieved finality due to the aggrieved party's failure to pursue the exclusive judicial remedy for reviewing administrative action.” (*Briggs v. City of Rolling Hills Estates* (1995) 40 Cal.App.4th 637, 646.) Respondent Preuss’ failure to challenge the adverse 2010 findings through administrative mandamus in superior court now estops her from relitigating the same issue regarding the effect of her attendance at the August 2006 training on her RIF seniority date.

65(d). Respondent Preuss contends that her RIF seniority date should be October 10, 2005. On that date, she began serving as a Title I reading intervention specialist, three hours per day, Monday through Thursday. Since she was not scheduled to work on Fridays, she was available to substitute on Fridays as needed. The contracts she signed while serving in a categorical position as an intervention specialist also indicated her status as a substitute. Respondent Preuss did not establish a basis to adjust her RIF seniority date.

66. Steve Shin. Respondent Steve Shin (#759967) has a RIF seniority date of January 28, 2005, when he signed his first probationary contract. He contends that his correct seniority date is August 28, 2003, when he signed the first of two temporary contracts, under which he served until he signed his probationary contract. He believes his service under those temporary contracts should be credited for purposes of his seniority date, pursuant to Education Code sections 44918.<sup>22</sup> This argument is without merit. Section 44918 is not applicable to the District, since the District has an ADA above 400,000 students. Consequently, Respondent Shin has not established a basis to adjust his RIF seniority date.

67. Melanie Welsh. Respondent Melanie Welsh (#952447) teaches middle school English and journalism and is the yearbook advisor. She has been assigned a RIF seniority

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<sup>22</sup> Education Code section 44918 provides that an employee who serves as a substitute or temporary employee for at least 75 percent of the regular school days in a school year shall be deemed to have served that school year as a probationary employee if he/she serves the following school year in a probationary status. However, Education Code section 44918, subdivision (f), specifies that the statute does not apply to school districts in which the average daily attendance (ADA) exceeds 400,000.



68. Suzanne Waisbren. Respondent Suzanne Waisbren (#737442) has been assigned a RIF seniority date of February 13, 2007. She claims that her correct RIF seniority date should be November 14, 2005, when she began teaching in her own classroom at Reseda Elementary School (Reseda) under a 30-day permit. She continued working in the same classroom for the rest of the 2005-2006 school year, and in the interim, on January 20, 2006, she was issued a university internship credential. The District retained her to teach in her own classroom for the 2006-2007 school year, and on February 13, 2007, she was issued a preliminary credential and entered into a probationary contract. Respondent Waisbren's prior contracts were not presented in evidence, and the District's employment classification for her under those contracts was not established. The District points to Respondent Waisbren's initial 30-day permit and asserts that she was a temporary employee. However, the District did not establish that, at any point prior to February 13, 2007, Respondent Waisbren was properly classified as a temporary or substitute employee.<sup>24</sup> By default, Respondent Waisbren is presumed to have been serving as a probationary employee at that time.<sup>25</sup> Consequently, her RIF seniority date should be adjusted to November 14, 2005.

69. Curtis Wynkoop. Respondent Curtis Wynkoop (#805880) has a RIF seniority date of October 3, 2006. He asserts that his correct RIF seniority date is September 6, 2006. Respondent Wynkoop provided service as a substitute for the 2005-2006 school year. On July 21, 2006, he signed documents indicating his availability for employment as a day-to-day substitute for the 2006-2007 school year. On September 6, 2006, he began working in a substitute capacity at Hesby Oaks School. He taught for the entire 2006-2007 school year in the same assignment. On October 2, 2006, he signed a probationary contract, and on October 3, 2006, he also signed a Verification of Seniority Date verifying that his first date of paid probationary contract service was October 3, 2006. Respondent Wynkoop failed to establish a basis to adjust his RIF seniority date.

70. Tami Friedkin. Respondent Tami Friedkin (#632596) has a RIF seniority date of August 30, 2001. She asserts that her correct RIF seniority date is August 1, 2001, because that is the date she believes she began providing services to the district around three weeks to a month prior to the first day of instruction. She did not provide any evidence to

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<sup>24</sup> See *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1282-1283, in which the court held that it is improper for a school district to classify a teacher as temporary simply because she has less than a full credential.

<sup>25</sup> See *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, 916-917, in which it was held that "probationary" is the default classification. School districts must classify all teachers as probationary who are not otherwise required by the Education Code to be classified as permanent, temporary, or substitute. The *Kavanaugh* Court concluded that the relevant Education Code sections revealed the Legislature's intent that teachers be informed of their classification sufficiently early in the process to enable them to make informed decisions regarding their future employment. (*Id.*, at 921.)

establish the specific day she began providing services. However, she signed a probationary contract on August 15, 2001, for services to commence on or before October 15, 2001, and her fingerprint clearance (required for her to be allowed to begin working for the District) was not obtained until August 20, 2001. Respondent Friedkin failed to establish a basis to adjust her RIF seniority date.

71. Oma Ray. Respondent Oma Ray (#756403) has been assigned a RIF seniority date of August 29, 2001. She asserts that her correct RIF seniority date is August 13, 2001, because that is the date she began working as a counselor for the District. On that date, students and teachers were on campus, and she was required to come into work and perform counseling duties. A Verification of Seniority Date for Respondent Ray confirms that her “first day of paid probationary or District Intern contract service” was August 13, 2001. Respondent Ray established that her RIF seniority date should be adjusted to August 13, 2001.

72. Angela Frierson. Respondent Angela Frierson (#703816) has been assigned a RIF seniority date of September 9, 2005. She contends that her correct seniority date is July 1, 1999, because that is the date she purportedly began working as a teacher for the District. On July 9, 1999, Respondent Frierson signed a “provisional” contract for services as an elementary teacher for the 1999-2000 school year. She began working on July 1, 1999, at a year-round school. She continued working full time as an elementary teacher for the District under “provisional” contracts for the 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005 school years. A provisional contract refers to the type of credential held by the employee, not the status or classification of the employee.<sup>26</sup> It does not state whether the teacher is a substitute, temporary or permanent employee. From 1999 through the end of the 2004-2005 school year, Respondent Frierson was working under pre-intern and emergency multiple subject permits. On September 7, 2005, Respondent Frierson signed a probationary contract as an elementary counselor. However, the District did not establish that, at any point prior to September 7, 2005, Respondent Frierson was properly classified as a temporary or substitute employee. By default, pursuant to the *Kavanaugh* and *Bakersfield* cases, it is presumed that Respondent Frierson initially began serving as a probationary employee on July 1, 1999. Consequently, her RIF seniority date should be adjusted to July 1, 1999.

### *Miscellaneous Issues*

73. Krista Valle. Respondent Krista Valle (#742364) has a RIF seniority date of July 2, 2007, and possesses a multiple subject credential with an authorization to teach English. She served as an elementary school teacher for two years, and then began teaching middle school English for the 2010-2011 school year. She received her layoff notice as an elementary teacher, but seeks to be laid off as an English teacher since that is her current

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<sup>26</sup> (*California Teachers Assn v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 147-148.)

assignment. She admits that her seniority date is lower than other English teachers who are subject to layoff and that, even if she was classified as an English teacher, she would still be subject to layoff. Although she should have received her layoff notice as an English teacher, Respondent Valle remains subject to layoff based on her RIF seniority date.

74. Erica Cox. The District considers Respondent Erica Cox to be a former employee. However, she has filed an action in the Los Angeles Superior Court challenging her non-reelection. In the event the Superior Court orders her reinstatement, the District served her with a layoff notice, since she would be one of the secondary counselors subject to layoff. Respondent Cox did not testify at the hearing. Consequently, she did not establish any basis to rescind her layoff notice or to dismiss the Accusation against her

### LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2(a). The services identified in the Board's Resolution are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955.

2(b). Respondents argued that the District's reduction of services was a "reduction in all teachers," and sought to invalidate this reduction, citing *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571. This argument was not persuasive. The reasoning in *Burgess* has been rejected. (See, *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 636; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32, 36.) Respondents have cited no valid authority to support their assertion that the reductions by the Board did not constitute particular kinds of service pursuant to Education Code section 44955.

3. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of the Board's discretion.

4. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and students within the meaning of Education Code sections 44955.

5. Services will not be reduced below mandated levels.

6. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services.

7. Education Code section 44955, subdivision (b), provides, in pertinent part:

[T]he services of no permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority,

is retained to render a service which said permanent employee is certificated and competent to render.

8(a). Social studies teacher Ramiro Guitierrez is being retained, even though he is junior to several Respondent social studies teachers who were noticed for layoff and have not had their layoff notices rescinded. Respondents argue that all social studies teachers with greater seniority than Mr. Guitierrez must be retained. However, Respondents provided no authority to would mandate this action.

8(b). Respondents rely on a literal interpretation of Education Code section 44955, subdivision (b). This “domino theory” remedy is not supported by relevant legal authority. Instead, it has been suggested that the proper remedy is for “a corresponding number of the most senior of the employees” who did not receive layoff notices to have their notices withdrawn. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567, 576.) Furthermore, Education Code section 44949, subdivision (c) (3), provides that “non-substantive procedural errors committed by the school district . . . shall not constitute cause for dismissing the charges unless the errors are prejudicial errors.” Thus, when a school district inadvertently fails to give notice to one employee, that procedural error should only result in one corresponding respondent having his/her layoff notice withdrawn, since that employee would be viewed as the one suffering prejudice. The other respondents would not be viewed as suffering prejudice from the mistaken failure to give notice to the employee, since they would have been subject layoff even if he/she had been properly noticed.

8(c). In this case, the failure to serve Mr. Gutierrez with a layoff notice was the result of inadvertence. Therefore, the appropriate remedy is to withdraw the layoff notice for the most senior social studies teacher who has not yet had his/her layoff notice rescinded. Given the size of the Seniority list, compounded by the complexity of the *Reed* redirected notices and subsequent rescissions, the ALJ has insufficient evidence to determine the identity of this individual. Consequently, the District shall be ordered to determine the identity of the most senior social studies teacher who has not yet had his/her layoff notice rescinded; the layoff notice and any Accusation against that individual shall be dismissed.

9(a). Pursuant to stipulation between the parties, the layoff notices issued to the following individuals are rescinded:

- (i) Respondent Moises Flores (#760045), who was inappropriately noticed for layoff;
- (ii) Respondent Victoria Overbey (# 803980), who was “over-noticed” for layoff;
- (iii) Denise Piscitello (#759977) who should not have received a redirected layoff notice;



(iv) Respondent Ingrid Villeda (#772433), who was inappropriately noticed for layoff;

(v) The 209 Respondents receiving rescissions of their redirected notices listed in Exhibit 95, which is incorporated by reference.

(vi) The 301 teachers receiving rescissions of their precautionary notices listed in Exhibit 94, which is incorporated by reference.

(vii) All Library Media teachers, except Lilia Abagi (#932104), Cynthia Bianchi (#200290), Marcy Drexler (#775109), Laureen Keough (#703441), Jacqueline Kogan (#954511), Kim Leng (#777062), Kathleen Sheppard (#804295), and Leslie Sipos (#140479). Those Library Media teachers whose layoff notices are rescinded include the following Library Media teachers who testified, or entered into a stipulation, at hearing: Michelle Addison; Susan Baranich; Steven Belton; Sandra Beltran-Mata; Michael Bernard; Melinda Buterbaugh; Laurel Bullock; Roza Besser; Rosemarie Bernier; Mary Byrne; Leslie Calderera; Kenneth Completo; Dale Futoran; Pauline Neilly; Adam Frankel; Oscar Gonzalez; John Hamrick; Laura Graff; Adalgisa Grazziani; Rebecca Karres; Karen Gonzalez; Rhys Kuzmich; Suzanne Osman; Melodee Lydon; Sylvia Calderon Mastros; Tamara Celi; Stephanie Lawrence; Henri Perkins; Maria Rangel; Stacia Salanoa; Shan Jia; Sandra Lagasse; Consuelo Abad; Fernando Navarro; Cynthia Williams; Jon Weinberg; Sherri Whitham; Melissa Mukai; Valary White; Patricia Young; Linda Roche; Allison Walker; Nora Murphy; and Alessaundra Mills.

(viii) The following Respondents who are certificated and competent to bump into, and have agreed to teach, the specified service areas/alternate courses: Angeline Hernandez (#734906) from CNE to CNS; Lesleigh Alchanati (#617464) from LIB to ELR; Paul Farbman (#280803) from LIB to ENG; Cheryl Guerbaoui (#574695) LIB to ENG; Glen Martinez (#662048) from LIB to ENG; Elizabeth Holloway (#700107) from LIB to ENG; Krystoff Przykucki (#762135) from ELR to ENG; Pauline Otoole Gascon (#770625) from ELR/ALT to ENG; Beatrice Raskin (#770879) from SEC/ALT to ENG; Jacqueline Cardona (#782309) from ELR to ENG; Ruth Brazalovich Mischkot (#788620) from ELR to ENG; Jade Ellis (#770664) from LIB to ENG; Carl Finer (#788484) from ESL to ENG/SST; Joyce Aguebor (#288819) from ELR to JEN; Legdrena Bennett (#575820) from COH to JEN; Eleanor Walker (#678960) from COH to JEN; Judy Daley (#683425) from ELR to JEN; Robert Baron (#703906) from ELR to JEN; Cecily Vizas (#712311) from SST/MA to JEN; Virginia Dominguez (#743805) from ELR to JEN; Diana Minard (#762042) from ELR to JEN; Thuy Doan Nguyen (#779052) from ELR to JEN; Randi Seligson (#779091) from ELR to JEN; Rebekah Shibley (#780220) from ELR to JEN; Nicholas Kapp (#781810) from ELR to JEN; Kathleen Grimm (#782322) from ELR to JEN; Tracy Townsend (#790001) from ELR to JEN; Eric Tavis (#789771) from ELR to JEN/JSC/JSS; Bobbie Isom (#788603) from ELR to JEN/JSS; Erika Romero Arciniega (#641981) from ELR to JMA; Veronica Torres (#694049) from ELR to JMA; Xiomara Antoine (#711700) from ELR to JMA; Leticia Lopez (#729665) from MAT to JMA; Danielle Rivlin (#743513) from ELR to JMA; Vanessa Luna (#756771) from ELR to JMA; Rodolfo Hernandez (#771325) from ELR to JMA; Ryanne

Gardner (#777430) from ELR to JMA; William Kulencavich (#778809) from ELR to JMA; Hyon Kim (#782340) from ELR to JMA; Jennifer Geidel (#789085) from ELR to JMA; Shauna Segal (#782315) from ELR to JMA/JSC; Bryan Stewart (#957574) from ELR to JSC; John Stephens (#780202) from ELR to JSS; Maria Saucedo (#781844) from ELR to JSS; Carlos Santana (#782252) from ELR to JSS; Peter Anderson (#794737) from ELR to JSS; Jesus Landazuri (#795081) from PERM ELEMENTARY to MAF; Antonio Novoa (#664143) from PERM SOCIAL STUDIES to MAT; Nancy Chau (#759549) from ELR to MAT; Hyun Park (#788439) from ELR to MMD; Lisa Alvarado (#767692) from HTH to PEA; Erin McNulty (#771147) from PERM HEALTH to SBS; Michael Connor (#926269) from PERM SOCIAL STUDIES to SBS; Annette Scherr (#542647) from LIB to SCB; Claire Anton (#788390) from ELR to SCI; Erik Matsubayashi (#782020) from ELR to SIF; Garry Joseph (#789370) from JSC/ED CODE to SIF; Ashima Vohra (#805981) from ELR to SIF; Albert Estrada (#809313) from ELR to SIF; Karl Sanchez (#644867) from CRD to SIF/SST; Allen Koochof (#712904) from ELR to SST; Monique Greenberg (#756345) from PERM HEALTH to SST; Jennifer Ohlund (#788577) from ELR to SST; Mary Wroblewski (#805040) from HTH/SCI to SBS; Erin Smale (#935461) from HTH/SCI to SBS; Janice Wald (#531038-6) from ENG to SST; Steven Kent (#757063) from BUS to CSC; Deborah Garcia (#772574) from ELR to ENG or SST; Andrea Kostas Gioulis (#777113) from SST to JMA; Robert Andrews (#773016) from BUS to either Chem or CSC; Kimberly Balala (#773219) from LIB to SST; Jay Cherney (#287814) from ELR to SPE; Lisa Gutierrez (#718673) from LIB to ELR; Deanna Jones (#726692) from LIB to ELR; Judy Klein (#788825) from ELR to CSC; Sofia Vasserman (#603875) from ELR to CSC; John Stoffers (#682376) from LIB to ELR; Marc McPhee (#643485) from LIB to CSC; Joseph Kalala (#718094) from FLF to SST; Kamilah Jackson (#778076) from LIB to ENG; Jake Guthrie (#974063) from PEA to JMA; Maria Alonzo (#804548) from BUS to CSC; Heidi Johnson (#761526) from LIB to ART; Howard Spike (#152821) from BUS to SST; Reatha Powery (#723444) from BUS to CSC; Talyn Simonian (#809178) from BUS to CSC; Mariam Fotolyan (#674560) from BUS to CSC; Michael Jaquias (#799993) from BUS to CSC; David Ifergan (#737284) from BUS to CSC; Romelia Valiquette (#719220) from ELR to JMA; Cindy Magyar (#809204) from ELR to SBS; Penelope Valdez (#713143) from LIB to SBS; Matthew Holtzman (#956831) from HTH to SIF; Michelle Hogan (#793903) from PSA to CNS; and Angeline Hernandez (#734906) from CME to CMS.

(x) The following Respondents who are certificated and competent to bump into the following specified positions: Yolando Aquino (#789106) from BUS to CSC; John Rush (#788495) from BUS to CSC; Wendy Gentry (#788468) from BUS to CSC; Andrew Martinez (#737370) from BUS to CSC; Jordan Lessem (#779025) from BUS to CSC; Kenneth Euken (#780569) from BUS to CSC; Gregory Jaurequi (#760273) from BUS to CSC; Larry Krant (#762199) from BUS to CSC; Tamarin Wood (#804011) from LIB to ENG; and Mehmet Sonmezay (#799785) from BUS to CSC.

(xi) Mary Truitt (#320006), who is certificated and competent to move from BUS to CSC.

9(b). Pursuant to the District's agreement on June 14, 2011, the layoff notices issued to the following individuals who testified at hearing are rescinded: Mario Acuna (#756182); Kristen Black (#672376); Dana Carli-Brooks (#804018); Tiffany Campbell (#766628); Gregory Calvert (#809317); Nicholas D'Amico (#273995); Chryssa Elliott (#726560); Jessica Fletcher (#790200); Angelica Fuentes (#661759); Alisa Guthrie (#289418); Anne Marie Herrndorf (#688457); Maria Herrera (#760241); Elizabeth Jaro (#771474); Janny Kim (#772823); Sunhee Kim (#764736); Gary Lee (#70275); Ricki Martin (#755775); Russell Martin (#582431); Dorothy McGatlin (#800159); Dana Menck (#713120); Robert Pahilanga (#760805); Patrick Sanders (#702875); Estrellita Thayer (#744626); Irayda Vallin (#647994); Sudha Venkadesan (#772495); and Karen (Beth) Weiss (#786377).

9(c). The Accusations against the individuals listed in Legal Conclusions 9(a) and 9(b) shall be dismissed.

10(a). The following Respondents established that they are certified and competent to bump into the following positions: Respondent Phillip Koch (#545284) and Respondent Janet Larson (#790013) who are certificated and competent, and have sufficient seniority, to bump into social studies (SST) positions.

10(b). The Accusations against these individuals shall be dismissed.

11(a). Cause was established to adjust the RIF seniority dates of the following Respondents: Respondent Melanie Welsh (#952447), whose RIF seniority date was adjusted from September 4, 2007, to August 4, 2007; Respondent Suzanne Waisbren (#737442), whose RIF seniority date was adjusted from February 13, 2007, to November 14, 2005; Respondent Oma Ray (#756403), whose RIF seniority date was adjusted from August 29, 2001, to August 13, 2001; and Respondent Angela Frierson (#703816), whose RIF seniority date was adjusted from September 9, 2005, to July 1, 1999.

11(b). The District shall be ordered to determine if the adjusted RIF seniority dates of these Respondents will no longer subject them to layoff, and if so, the Accusation against any such Respondent(s) shall be dismissed.

12. Except as set forth in the Legal Conclusions above and the resulting orders below, no junior certificated employee will be retained to perform services that a more senior employee is certificated and competent to render.

13. Cause exists within the meaning of Education Code section 44955 for terminating or reducing the remaining Respondents' employment for the 2011-2012 school year, as set forth in Factual Findings 1 through 74, and Legal Conclusions 1 through 12.

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## ORDER

1. The Accusations are dismissed against Respondents Moises Flores, Victoria Overbey, Denise Piscitello, and Ingrid Villeda.
2. The Accusations are dismissed against the 209 Respondents receiving rescissions of their redirected notices listed in Exhibit 95 and the 301 teachers receiving rescissions of their precautionary notices listed in Exhibit 94.
3. The Accusations are dismissed against Respondent library media teachers Michelle Addison; Susan Baranich; Steven Belton; Sandra Beltran-Mata; Michael Bernard; Melinda Buterbaugh; Laurel Bullock; Roza Besser; Rosemarie Bernier; Mary Byrne; Leslie Caldarrera; Kenneth Completo; Dale Futoran; Pauline Neilly; Adam Frankel; Oscar Gonzalez; John Hamrick; Laura Graff; Adalgisa Grazziani; Rebecca Karres; Karen Gonzalez; Rhys Kuzmich; Suzanne Osman; Melodee Lydon; Sylvia Calderon Mastros; Tamara Celi; Stephanie Lawrence; Henri Perkins; Maria Rangel; Stacia Salanoa; Shan Jia; Sandra Lagasse; Consuelo Abad; Fernando Navarro; Cynthia Williams; Jon Weinberg; Sherri Whitham; Melissa Mukai; Valary White; Patricia Young; Linda Roche; Allison Walker; Nora Murphy; Alessaundra Mills; and all other Library Media teachers, except Lilia Abagi, Cynthia Bianchi, Marcy Drexler, Laureen Keough, Jacqueline Kogan, Kim Leng, Kathleen Sheppard, and Leslie Sipos.
4. The Accusations are dismissed against Angeline Hernandez, Lesleigh Alchanati, Paul Farbman, Cheryl Guerbaoui, Glen Martinez, Elizabeth Holloway, Krystoff Przykucki, Pauline Otoole Gascon, Beatrice Raskin, Jacqueline Cardona, Ruth Brazalovich Mischkot, Jade Ellis, Carl Finer, Joyce Aguebor, Legdrena Bennett, Eleanor Walker, Judy Daley, Robert Baron, Cecily Vizas, Virginia Dominguez, Diana Minard, Thuy Doan Nguyen, Randi Seligson, Rebekah Shibley, Nicholas Kapp, Kathleen Grimm, Tracy Townsend, Eric Tavis, Bobbie Isom, Erika Romero Arciniega, Veronica Torres, Xiomara Antoine, Leticia Lopez, Danielle Rivlin, Vanessa Luna, Rodolfo Hernandez, Rynne Gardner, William Kulencavich, Hyon Kim, Jennifer Geidel, Shauna Segal, Bryan Stewart, John Stephens, Maria Saucedo, Carlos Santana, Peter Anderson, Jesus Landazuri, Antonio Novoa, Nancy Chau, Hyun Park, Lisa Alvarado, Erin McNulty, Michael Connor, Annette Scherr, Claire Anton, Erik Matsubayashi, Garry Joseph, Ashima Vohra, Albert Estrada, Karl Sanchez, Allen Koochof, Monique Greenberg, Jennifer Ohlund, Mary Wroblewski, Erin Smale, Janice Wald, Steven Kent, Deborah Garcia, Andrea Kostas Gioulis, Robert Andrews, Kimberly Balala, Jay Cherney, Lisa Gutierrez, Deanna Jones, Judy Klein, Sofia Vasserman, John Stoffers, Marc McPhee, Joseph Kalala, Kamilah Jackson, Jake Guthrie, Maria Alonzo, Heidi Johnson, Howard Spike, Reatha Powery, Talyn Simonian, Mariam Fotolyan, Michael Jaquias, David Ifergan, Romelia Valiquette, Cindy Magyar, Penelope Valdez, Matthew Holtzman, Michelle Hogan, Angeline Hernandez, Yolando Aquino, John Rush, Wendy Gentry, Andrew Martinez, Jordan Lessem, Kenneth Euken, Gregory Jaurequi, Larry Krant, Tamarin Wood, Mehmet Sonmezay, and Mary Truitt.

5. The Accusations are dismissed against Respondents Mario Acuna, Kristen Black, Dana Carli-Brooks, Tiffany Campbell, Gregory Calvert, Nicholas D'Amico, Chryssa Elliott, Jessica Fletcher, Angelica Fuentes, Alisa Guthrie, Anne Marie Herrndorf, Maria Herrera, Elizabeth Jaro, Janny Kim, Sunhee Kim, Gary Lee, Ricki Martin, Russell Martin, Dorothy McGatlin, Dana Menck, Robert Pahilanga, Patrick Sanders, Estrellita Thayer, Irayda Vallin, Sudha Venkadesan, and Karen (Beth) Weiss.

6. The Accusations are dismissed against Respondents Phillip Koch (#545284) and Janet Larson (#790013).

7(a). The District shall determine the identity of the most senior social studies teacher who has not yet had his/her layoff notice rescinded.

7(b). The layoff notice and any Accusation against that individual shall be dismissed.

8(a). The District's RIF seniority dates for the following Respondents shall be adjusted: Respondent Melanie Welsh (#952447) - RIF seniority date adjusted from September 4, 2007, to August 4, 2007; Respondent Suzanne Waisbren (#737442) - RIF seniority date adjusted from February 13, 2007, to November 14, 2005; Respondent Oma Ray (#756403) - RIF seniority date adjusted from August 29, 2001, to August 13, 2001; and Respondent Angela Frierson (#703816) - RIF seniority date adjusted from September 9, 2005, to July 1, 1999.

8(b). The District shall determine if any of these Respondents are no longer subject to layoff given their adjusted RIF dates and seniority. The Accusations against any such Respondent(s) is/are dismissed.

9. The Accusations are sustained against the remaining Respondents who have not yet had their layoff notices rescinded. Notice shall be given to those Respondents that their services will not be required for the 2011-2012 school year, and such notice shall be given in inverse order of seniority.

Dated: June 17, 2011

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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings